

State of Texas

County of Harris

**MASTER CONTRACTOR AGREEMENT
CITY OF HOUSTON
HURRICANE IKE SINGLE FAMILY HOME REPAIR PROGRAM**

PREAMBLE

THIS MASTER CONTRACTOR AGREEMENT (this "Agreement") is made and entered into by and between THE CITY OF HOUSTON (the "City") and _____ (the "Contractor").

In consideration of the mutual covenants and agreements contained in this Agreement, the parties agree that all contracts and projects entered into for an Identified Project between the parties under the SFHRP will be governed by, and subject to the terms and provisions of, this Agreement so long as a copy hereof is attached as an exhibit to the Tri-Party Agreement pertaining to the applicable Identified Project, provided that if a copy of a Master Contractor Agreement is not attached to a Tri-Party Agreement which provides for the attachment thereof, the Master Contractor Agreement executed most immediately prior thereto by the City and the Contractor shall be applicable thereto, and further agree as follows:

SECTION I

DEFINITIONS

Certificate of Acceptance shall mean a written statement issued by the City and signed by the City's inspector to be delivered to a Homeowner for execution stating that all Work has been generally completed in accordance with the Work Write-up for an Identified Project.

Change Order shall mean an amendment to the Work and/or Contract Price pertaining to an Identified Project, submitted by Contractor and approved by a Homeowner and the City in accordance with the Project Documents and the SFHRP Guidelines.

City shall mean the City of Houston, and shall include its various departments, officers,

employees, legal representatives, agents and third party vendors.

Competitive Sealed Proposal shall refer to the project delivery method authorized by Subchapter H of Chapter 271 of the Texas Local Government Code and required in connection with Reconstruction Projects under the SFHRP.

Contract Price shall mean the price to be paid by the City to the Contractor for the performance of the Work in connection with an Identified Project. Any changes in the Contract Price shall only result from authorized Change Orders. The Contract Price shall be paid in the form of progress payments in accordance with the Progress Schedule.

Contractor shall mean the contractor designated in the introductory paragraph of this Agreement. For Reconstruction Projects, the Contractor shall be selected utilizing the Competitive Sealed Proposal method, with sealed work plans and specifications in accordance with applicable laws and procedures, including the SFHRP Guidelines.

Contractor's Application for Payment shall mean that certain Application and Certificate for Payment submitted by Contractor requesting a progress payment in accordance with the Progress Schedule. Such Contractor's Application for Payment shall reflect the cost for the portion of the Work that has been completed by Contractor, shall include the notarized signature of the Contractor and otherwise be in form and substance acceptable to the City.

Director shall mean the Director of HCDD or any other person(s) that may be designated to perform the various functions assigned to the Director.

HCDD shall mean the City's Housing and Community Development Department.

Homeowner shall mean an owner of a Residence that qualifies under the SFHRP for the Rehabilitation or Reconstruction of its Residence located on the Homeowner's Property.

Homeowner's Property shall mean the land of a Homeowner, all rights and appurtenances thereto; all improvements now or hereafter attached to the land or improvements, and all substitutions and replacements thereof and additions and successions thereto.

HUD shall mean the U.S. Department of Housing and Urban Development and any successor government agency.

Identified Project shall mean the Rehabilitation or Reconstruction of a specified Residence located on a specified Homeowner's Property pursuant to the SFHRP. Each such Identified Project shall be subject to and governed by the terms and provisions of this Agreement and the Project Documents.

Notice to Proceed shall mean the written authorization issued by the City for the Contractor to proceed with the Work set forth in the Work Write-up for an Identified Project.

Payment Request shall mean the form prepared, signed and submitted to the appropriate City office by the City's inspector requesting a progress payment to the Contractor. The Payment Request shall reflect the value of the completed and approved portion of the Work on the specified line items by trade, the total of the line-item cost of all portions of the completed Work by trade listed, the retainage amount and the resulting amount of the progress payment.

Plans and Specifications shall mean a detailed itemized list approved by the City that provides instructions to the Contractor for an Identified Project, which may include drawings as applicable. Plans and Specifications may be amended by authorized Change Orders.

Progress Schedule shall mean the schedule of the Work determined by the Contractor and approved by the City in connection with an Identified Project.

Project Documents shall mean this Agreement, the Tri-Party Agreement, the Plans and Specifications, the Progress Schedule, the Notice to Proceed, the Certificate of Acceptance, and all other documents pertaining to, or executed in connection with, an Identified Project.

Reconstruction or Reconstruction Project shall mean the demolition, if required, and the rebuilding of a Residence on a Homeowner's Property, plus increases pursuant to Change Orders. A reconstructed Residence must be functionally equivalent to the structure being replaced, but may be larger or smaller than the original Residence depending on the needs of the family occupying the reconstructed Residence.

Rehabilitation or Rehabilitation Project shall mean those repairs required to remove all life, health, or safety hazards to a Residence on a Homeowner's Property, plus increases pursuant to Change Orders.

Residence shall mean a single family detached dwelling located on, or to be reconstructed on a Homeowner's Property.

SFHRP shall mean the CDBG Disaster Recovery Program being implemented by the City pursuant to Contract No. 70090001 between the City and the Texas Department of Housing and Community Affairs for Hurricane Ike/Dolly Funding under the Consolidated Security Disaster Assistance and Continuing Appropriations Act of 2009.

SFHRP Guidelines shall mean Hurricane Ike Single Family Repair Guidelines adopted by HCDD and approved by the Texas Department of Housing and Community Affairs.

Subcontractor shall mean any person or entity who, pursuant to this Agreement, will perform Work at a Residence at the request of Contractor.

Survey shall mean an identification of all relevant characteristics of a Homeowner's Property, including but not limited to a Homeowner's Property location, the improvements location and the metes and bounds description of a Homeowner's Property.

Tri-Party Agreement shall mean the tri-party agreement by and between a Homeowner, Contractor and the City governing, and executed in connection with, an Identified Project.

Work shall mean the labor and the materials necessary to complete an Identified Project pursuant to the Project Documents.

Work Write-up shall mean the form that specifies and quantifies the Work to be done in connection with an Identified Project, and includes the Plans and Specifications.

SECTION II

SCOPE OF SERVICES

Contractor's Duties.

In connection with each Identified Project:

Section 2.01 General. The Contractor shall perform all of the services and furnish all materials, labor and equipment necessary to complete the Work described in the Work Write-up.

Section 2.02 Inception. The Contractor shall not begin the Work until the Contractor receives a Notice to Proceed.

Section 2.03 Scope. All Work to be performed and all specifications pertaining thereto will be identified in the Project Documents. **CONTRACTOR SHALL PERFORM NO OTHER WORK UNLESS CHANGE ORDERS FOR ADDITIONAL WORK OR MATERIALS ARE ISSUED IN ACCORDANCE WITH THIS AGREEMENT AND THE PROJECT DOCUMENTS.** All properly approved and executed Change Orders shall be made a part of Project Documents.

Section 2.04 Side Agreements. The Contractor agrees not to enter into any side agreements for additional work or materials for a Residence over and above those specified in the Work Write-up, where such labor is to be performed or material to be supplied or installed prior to the issuance of a Certificate of Acceptance.

Section 2.05 Surveys. For all Reconstruction Projects, the Contractor agrees to cause a survey of the Homeowner's Property to be completed by a registered surveyor, at Contractor's sole expense.

SECTION III

STANDARDS OF PERFORMANCE

In connection with each Identified Project:

Section 3.01 Codes and Standards. Contractor shall perform all Work in conformance with the applicable building codes, the Plans and Specifications, and any manufacturer's recommendations. To the extent of conflict between any of the foregoing codes and standards and the Plans and Specifications, the more restrictive shall apply. Contractor shall obtain and pay all fees for all necessary building permits and inspections required by the City and furnish a copy of same to the City. If modification of the Work Write-up is required to comply with the codes and standards, then the parties shall negotiate and agree to a modification of the Work Write-up by Change Order.

Section 3.02 Protective Measures. The Contractor is responsible for the care and safekeeping of all Work until its completion. The Contractor shall bear the risk of loss for damage to a Homeowner's Property (including land, structures, and improvements) due to equipment, vehicles, tools, or operations employed in the execution of the Work under Work Write-up, and due to exposure to the elements which results from the execution of the Work under the Work Write-up. Except as otherwise provided in the Plans and Specifications or the Work Write-up, upon completion of the Work, the Contractor shall clear and remove all surplus materials, equipment, refuse, dirt, or rubbish that has resulted from the performance of the Work under the Work Write-up, at the Contractor's expense. The Contractor shall also leave a Homeowner's Property in a "broom-clean" condition at the end of each workday if the unit is occupied during the Work.

Section 3.03 Acts and Omissions. The Contractor shall be responsible to the City for the acts and omissions of his/her employees, agents, and subcontractors and their agents and employees.

SECTION IV

CONTRACT AMOUNT

In connection with each Identified Project:

Section 4.01 Contract Price. The City shall pay the Contractor the Contract Price for the performance of the Work described in the Project Documents. Any changes in the Contract Price shall only result from authorized Change Orders. The Contract Price shall be paid in the form of progress payments, which will be submitted and disbursed according to the Progress Schedule.

Section 4.02 Bid Price. The Contractor's bid price will be binding on the Contractor for a minimum period of at least 90 days from the date the bid is received by the City.

Section 4.03 Change Orders. If the Contractor determines that a change in the Work or Contract Price is required, the Contractor may submit an estimate for increases or decreases due to such change. The City shall review the requested change. If the City elects to authorize the change, the City will compute the reduction from or addition to the Contract Price due to said change and will authorize such change in writing by the issuance of a Change Order. The Contractor will not, and shall not have any obligation to, perform any change in the Work until a Change Order has been authorized and issued by the City. Under no circumstances may the amount of the Contract Price, plus Change Orders exceed the maximum amount of assistance authorized under the SFHRP Guidelines.

SECTION V

PAYMENTS

In connection with each Identified Project:

Section 5.01 General. The sole obligation of the City with regard to payment of the Contract Price shall be limited to compensation for the Work as specified in the Project Documents as such Work or portion thereof is completed in accordance with the Progress Schedule.

Section 5.02 Progress Payments

A. Each progress payment will not exceed the cost set forth in the Progress Schedule for the portion of the Work which has been completed and approved by the City as provided below, and shall be limited to ninety (90%) percent of said cost.

B. All progress payments will be requested in accordance with the Progress Schedule. When requesting a progress payment:

1. Contractor must submit a Contractor's Application for Payment.
2. The City's inspector will:
 - i. review the Contractor's Application for Payment,
 - ii. perform a field inspection of the Identified Project,
 - iii. prepare a field report in which the City's inspector determines whether the portion of the Work completed has been satisfactorily completed in accordance with the Project Documents, and the value of the satisfactorily completed portion of the Work,
 - iv. sign the Contractor's Application for Payment as evidence of the City's inspector's approval of such portion of the Work completed,
 - v. prepare and sign a Payment Request authorizing payment of the progress payment requested by the Contractor. The Payment Request shall reflect the value of the completed and approved portion of the Work on the specified line items by trade, the total of the line-item cost of all portions of the completed Work by trade listed, the retainage amount and the resulting amount of the progress payment. The completed Payment Request must be submitted to the Contractor for review and signature, and
 - vi. forward the fully executed Payment Request to the appropriate City office for processing and payment, which payment will be made to the Contractor within ten (10) days from the date of the Payment Request (except for the final payment).

Section 5.03 Final Inspection and Payment.

A. Upon the City's Inspector being satisfied that all Work is complete, the City's inspector will arrange and conduct a walk-through inspection of the Residence together with the Homeowner and the Contractor. During the final inspection, the City's inspector will discuss the warranty and any other outstanding issues with the Homeowner. The City's inspector and the Homeowner will make a list of items that are in need of correction or completion, based upon the Project Documents (the "Punch List"). The City's inspector will provide the Homeowner and Contractor with a copy of the Punch List. The Contractor will schedule and complete the Work on the Punch List within five (5) days of receipt thereof. When the Work on the Punch List is complete, the Contractor, Homeowner and City's inspector will verify that all such Work has been completed.

B. Upon completion of all Work on the Punch List and verification of the completion by the Contractor, the Homeowner and the City's Inspector, the City's Inspector will forward the Payment Request for the final payment to the appropriate City office for processing and payment, which final payment, including the 10% retainage, will be made to

the Contractor after thirty (30) days from the date of the Payment Request.

SECTION VI

TIME OF PERFORMANCE

Section 6.01 Time for Performance. The Work to be performed in connection with each Identified Project shall commence on the date specified in the Notice to Proceed issued in connection with such Identified Project. The Work shall be completed within the time period specified in said Notice to Proceed.

Section 6.02 Major Forces. If performance by the Contractor is prevented or delayed as a direct result of unusual climatic conditions, riot, insurrection, fire, act of nature, or operation of law, the allotted time for the completion of the Work for each Identified Project may be extended by one calendar day for each calendar day lost from such cause, provided that the City approves the extension in writing. The Contractor must notify the City in writing of the delay and the reason or reasons for the delay within three (3) days after the beginning of such delay. All such extensions shall be documented with a Change Order.

Section 6.03 Liquidated Delay Damages. The Contractor and the City agree that a breach as to completion time for an Identified Project under the Project Documents will cause damage to the City, and that such damage cannot be accurately measured. Therefore, the parties agree that \$100.00 shall be subtracted from the Contract Price for each and every calendar day that the Work or any portion of the Work remains uncompleted after the expiration of the time period set forth in the Notice to Proceed, or as extended.

SECTION VII

CONTRACTOR'S WARRANTY

Section 7.01 Warranty. Contractor expressly and unconditionally warrants and guarantees all of the Work performed in connection with an Identified Project in accordance with and for the periods set forth in Section 430.001 of the Texas Property Code. In the event said section of the Texas Property Code is revoked, the standards and periods as now provided will continue to apply to the Work. This warranty includes, without limitation, any condition that may impair or tend to impair the safe and normal use, functioning or enjoyment of the Residence and which results in any manner from any and all labor and/or materials used or supplied under the Project Documents for such Identified Project.

A. The warranty shall not be construed to limit or in any way modify any warranties or guarantees placed upon any material, appliances, fixtures or devices by their manufacturers, or any components for which a longer period of warranty is provided or required under the Project Documents for such Identified Project.

B. The warranty period shall commence on the date of the Certificate of Acceptance for such Identified Project.

C. The Contractor shall furnish the City with all manufacturer's and supplier's written guarantees, warranties and operating instructions covering materials and equipment furnished under the Project Documents for such Identified Project, together with any documentation required for validation.

Section 7.02 Correction of Work under Warranty. In the event that Contractor is notified of a defect that has arisen during the warranty period, Contractor shall begin to correct the defect within 10 days after receipt of notification and shall complete the correction of the defect as soon as possible free of cost or charges to the City or the Homeowner, whether or not the materials or equipment are guaranteed by the manufacturer or supplier. Notice of the defect must be given during the warranty period.

SECTION VIII

INSURANCE

The Contractor agrees to maintain sufficient insurance to protect him from claims under worker's compensation acts, if required by law, other employee benefits acts, and from personal liability for damages to property which may arise both out of and during any Work performed under Project Documents for an Identified Project, whether the work is performed by the Contractor, the City, or anyone directly or indirectly employed by either. The Contractor must maintain at a minimum the insurance coverage and limits as set out below, unless said limits are reduced in the discretion of the Director and the City Attorney of the City of Houston:

Workers' Compensation

Statutory Limits

Commercial General Liability
Including Contractor's Protective
Liability, Broad Form Property

Combined single limit of \$1,000,000 each
occurrence, subject to general aggregate
\$2,000,000; Products and Completed
Operations

Damage, Contractual Liability,
Bodily Injury, Personal Injury,
and Products and Completed
Operations (for a period of
one year following completion
of the Work under the Project
Documents for each Identified
Project)

\$1,000,000 aggregate

Automobile Liability Insurance
(for vehicles Contractor uses in
performing under these Guidelines,
including Employer's Non-Owned and
Hired Auto Coverage)

\$1,000,000 combined single limit

SECTION IX

DISPUTE RESOLUTION

Contractor agrees to submit disputes concerning the quantity, quality and completion or sufficiency of Work performed or materials supplied to the HCDD. The parties may appeal determinations of the HCDD to the Director.

SECTION X

TERMINATION

Section 10.01 Termination With Cause.

A. The City may terminate this Agreement in its entirety or as to an Identified Project for cause by giving written notice to the Contractor under any of the following circumstances:

1. If Contractor neglects to perform the Work in connection with any Identified Project properly, or in a timely manner, or refuses or neglects to supply proper or sufficient materials or workmen, or fails to perform any provision of any of the Project Documents pertaining to an Identified Project;
2. If Contractor is adjudged bankrupt, makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of insolvency;
3. If Contractor fails to make prompt payment to any Subcontractor for material or labor; or
4. Contractor violates any public law or ordinance.

B. If the City terminates this Agreement in its entirety or as to an Identified Project for cause, the City may take possession of the Identified Project site or sites and utilize any and all materials and appliances to be provided under the respective Project

Documents which are located on the site or sites to finish the Work. The City shall not prejudice any of the City's rights or remedies under this Agreement or the respective Project Documents, or by law, by terminating this Agreement in its entirety or as to an Identified Project for cause or by taking possession of the site or sites.

C. In case of termination of this Agreement in its entirety or as to an Identified Project for cause pursuant to this subsection, the Contractor shall not be entitled to receive any payment for any Identified Project until the Work for such Identified Project is completed. Upon completion of any such Identified Project, the Contractor shall be given any balance of the Contract Price less any damages and less the amount of expenses incurred by the City in finishing the Work for such Identified Project, including any costs in addition to or in excess of those originally contemplated in the Project Documents for such Identified Project. If the cost in completing the Work for any such Identified Project is greater than the original Contract Price, the Contractor shall pay the difference to the City upon ten (10) days written demand.

Section 10.02 Termination Without Cause. The City may terminate this Agreement in its entirety or as to an Identified Project without cause by giving written notice of said termination to the Contractor. In case of termination of this Agreement in its entirety or as to an Identified Project without cause pursuant to this subsection, the Contractor shall submit his final statement for all Work performed through the date of termination for the respective Identified Project or, in the case of the termination of this Agreement in its entirety, for all Identified Projects under this Agreement, which shall be payable in the manner provided in Section V of this Agreement.

Section 10.03 Acceptance of Inferior Work. In connection with any Identified Project, the City may accept Work that appears to be incorrect if, in the City's opinion, it is impractical to have the Work corrected. In such case, the City does not waive the defect, but rather may deduct a reasonable amount for the loss sustained from the Contract Price for said Identified Project. This subsection is not intended to limit the right of the City to recover additional damages as may be permitted under this Agreement, the respective Project Documents or by law.

Section 10.04 Cessation of Work. Upon receipt of a notice to terminate from the City, the Contractor shall discontinue all Work under this Agreement and all Project Documents for each Identified Project, unless the notice specifies a later termination date or that specific Work be completed prior to termination.

SECTION XI

ADDRESS AND NOTICE

Section 11.01 Notice. Unless otherwise provided in this Agreement, all notices including any communications, request, reply or advice shall be in writing. If mailed, notice shall be deemed effective the date that it is deposited in the United States mail. Notices given in any other manner shall be effective the date received by the party to be notified.

Section 11.02 Addresses. Notice shall be made to the following physical addresses:

To City: **CITY OF HOUSTON**
601 SAWYER, SUITE 400
HOUSTON, TEXAS 77007
ATTN: SFHRP

To Contractor: _____

To Owner: _____

Section 11.03 Change in Address. Each party shall have the right to change its respective address or addressee for notice under this Agreement, provided that at least ten (10) days written notice is given of such new address to the other party.

SECTION XII

ASSIGNMENT AND AMENDMENT

Section 12.01 Assignment. This Agreement shall not be assigned without the prior written approval of the City and the Director. The Contractor may subcontract the Work, however the Contractor shall remain liable for the Work unless an assignment is approved by the City in writing.

Section 12.02 Amendment. All amendments to this Agreement shall be written, executed by the parties, and approved by the Director. Any amendment which does not comply with this provision will be without effect.

SECTION XIII

INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY (AS DEFINED IN THIS AGREEMENT) HARMLESS FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO THE CONTRACTOR'S PERFORMANCE UNDER THE THIS AGREEMENT AND THE PROJECT DOCUMENTS, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- A. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY'S AND CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER IMMUNE FROM LIABILITY OR NOT; AND**
- (3) THE CITY'S AND CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER IMMUNE FROM LIABILITY OR NOT.**

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THIS AGREEMENT.

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS THIS RELEASE AND INDEMNITY TO THE CITY.

SECTION XIV

MISCELLANEOUS

Section 14.01 Cumulative Remedies. The City's rights, remedies and recourse granted in this Agreement and the Project Documents shall be cumulative and concurrent, may be pursued separately, successively and concurrently against the Contractor or any other responsible party at the City's sole discretion, and any proceeding under this Agreement or any of the Project Documents, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

Section 14.02 Entire Agreement. This Agreement, as defined in the introductory paragraph hereof and the Project Documents, including documents incorporated herein and therein by reference and the attachments hereto and thereto, contain the entire agreement of the parties relating to the subject matter hereof and is a full and final expression of the agreement between the parties.

Section 14.03 Applicable Law. This Agreement is subject to all laws of the United States of America, the State of Texas, charter and ordinances of the City and all rules and regulations of any regulatory body or office having jurisdiction and in particular, without limitation, the federal regulations codified at Title 24, Code of Federal Regulations (CFR) Part 570 or 24 CFR Part 92.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement in duplicate originals, each having full force and effect on ____day of _____, 20__.

CONTRACTOR:

By: _____

Name:

Title: _____

CITY OF HOUSTON:

MAYOR

CITY SECRETARY

COUNTERSIGNED:

DATE OF COUNTERSIGNATURE:

CITY CONTROLLER

APPROVED:

APPROVED AS TO FORM:

NEAL RACKLEFF
INTERIM DIRECTOR,
HOUSING AND
COMMUNITY DEVELOPMENT
DEPARTMENT, BY STEPHEN O.
TINNERMON, DEPUTY DIRECTOR,
HIS DULY AUTHORIZED DESIGNEE.

SENIOR ASST. CITY ATTORNEY